

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC 20591

In the matter of the petition of

EXPERIMENTAL AIRCRAFT
ASSOCIATION, INC.

for an exemption from § 61.23
of Title 14, Code of Federal Regulations

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Regulatory Docket No. FAA-2002-13467

DENIAL OF EXEMPTION

By letter dated September 26, 2002, Mr. Tom Poberezny, President, Experimental Aircraft Association, Inc. (EAA), P.O. Box 3086, Oshkosh, Wisconsin 54903-3086, petitioned the Federal Aviation Administration (FAA) on behalf of EAA for an exemption from § 61.23 of Title 14, Code of Federal Regulations (14 CFR). The proposed exemption, if granted, would permit each EAA member to conduct recreational pilot flight activities using a current and valid U.S. driver's license instead of an FAA-issued medical certificate. EAA intends to use the proposed exemption, if granted, to conduct research to establish a basis for deleting the third-class medical certificate requirement for recreational pilots.

The petitioner requires relief from the following regulation:

Section 61.23(a)(3)(ii) prescribes, in pertinent part, that a person must hold at least a third-class medical certificate when exercising the privileges of a recreational pilot certificate.

The petitioner supports its request with the following information:

The petitioner states that EAA programs, activities, and events are known throughout the world for supporting aviation safety and promoting personal enjoyment and responsibility within an aviation lifestyle. The petitioner also states that EAA's goal of promoting aeronautical educational experiences is achieved by providing its members and the public with access to the world of flight. The petitioner notes that EAA

chapters located all over the United States coordinate much of this access through outreach programs. The petitioner adds that these chapters are separately incorporated entities that conduct their own educational, charitable, and other programs for their members and the public.

The petitioner indicates that EAA believes that a holder of a recreational pilot certificate could operate safely as pilot in command (PIC) of an aircraft and conduct flight operations under § 61.101 while using a current and valid U.S. driver's license to verify his or her medical flight status.

The petitioner states that on June 25, 1985, the FAA published the notice of proposed rulemaking (NPRM) titled "Certification of Student Recreational, Recreational, Student Private and Private Pilots" (Docket No. 24695). The petitioner adds that this NPRM introduced the new certification process for recreational pilots. The petitioner states that on October 21, 1985, EAA submitted comments to this NPRM. The petitioner adds that EAA was the first general aviation organization to propose that a recreational pilot and recreational student pilot have the authority to self-certify their medical condition. The petitioner notes that EAA suggested that upon a recreational pilot's self-certification, the FAA should allow him or her to act as PIC of the aircraft.

The petitioner states that on March 29, 1989, the FAA published the final rule that resulted from this NPRM (59 FR 13030). The petitioner notes that in the final rule, the FAA stated that, despite commenter consensus favoring self-certification, it found no reason to rescind the third-class medical requirement for recreational pilots. The petitioner notes that the act of self-certifying is identical to that required of lighter-than-air and glider pilots. The petitioner relates EAA's belief that the FAA should extend the self-certification medical privilege authorized for the glider and balloon pilots to recreational pilots.

The petitioner states that on September 24, 1993, EAA submitted a petition for rulemaking (Docket No. 27517). The petitioner further states that EAA requested amending §§ 61.3(c), 61.83(c), 61.85(b), 61.96(c), 61.101(i), and 61.103(3) to allow a person flying as a recreational pilot or seeking such certification to, instead of holding a third-class medical certificate, medically self-certify so that he or she may perform PIC duties in a recreational aircraft. The petitioner notes that in EAA's petition for rulemaking, EAA provided additional information establishing a basis for the acceptance of recreational pilot medical self-certification.

The petitioner states that on March 3, 1994, EAA submitted supplemental information to its petition for rulemaking noting that the rules for the operation of ultralight vehicles (14 CFR part 103) allow pilots of these vehicles to self-certify their medical flight status. The petitioner adds that EAA also stated that there has not been a single accident attributed to medical incapacitation that caused injury to persons or property since part 103 was established in 1982.

The petitioner states that one of the primary exhibits of EAA's 1993 petition for rulemaking was a flight safety chart of all accidents from January 1, 1986, to December 31, 1992, including those the National Transportation Safety Board considered related to pilot medical issues. The petitioner notes that the chart clearly showed that accidents due to pilot medical issues were a small percentage of the overall accident rate. The petitioner states that on September 29, 1995, the FAA closed EAA's petition for rulemaking without granting the requested changes. The petitioner indicates that, since the FAA published EAA's petition for rulemaking in 1994, neither the FAA nor other general aviation organizations have conducted enough research to establish a basis for replacing the third-class medical certificate requirement for recreational pilots with the requirement to hold a current and valid U.S. driver's license.

The petitioner indicates that one of EAA's strategic goals has been to assist the FAA in obtaining an additional basis for allowing recreational pilots to use a current and valid U.S. driver's license as an acceptable FAA medical certificate. The petitioner notes that on February 5, 2002, the FAA published the NPRM titled "Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft" (Docket No. FAA-2001-11133, 67 FR 5368). The petitioner adds that in this NPRM, the FAA proposed allowing this new class of airmen to use a third-class medical certificate or a current and valid U.S. driver's license. The petitioner notes that, working with the FAA, EAA has continually promoted the use of a current and valid U.S. driver's license as an acceptable FAA medical certificate under the proposed light-sport pilot rules, noting that this was EAA's third step in establishing a basis for use of a U.S. driver's license.

The petitioner states that EAA believes that its 1985 comments on the recreational pilot NPRM and the data included in its 1993 petition for rulemaking are some of the primary driving forces behind the FAA's intent to allow the use of a U.S. driver's license in the forthcoming light-sport pilot final rule. The petitioner notes that in the proposed light-sport pilot rule, the FAA states that "the medical standards that permit an individual to drive an automobile in close proximity to other automobiles at high speeds provides an adequate level of safety to operate a light-sport aircraft." The petitioner further notes that the FAA indicated in the light-sport pilot proposed rule that if a U.S. driver's license applicant cannot meet the minimum standards, "the individual should not operate a light-sport aircraft, a more complex and demanding activity." The petitioner states that EAA agrees that the issuance of a U.S. driver's license occurs only after a demonstration of a basic level of health and passage of a minimum vision standards test by the issuing authority.

The petitioner states that EAA agrees with the FAA that a U.S. driver's license can be used safely to set minimum medical safety standards for those flying for sport and recreation. Therefore, the petitioner argues that use of a current and valid U.S. driver's

license for FAA medical certification should include light-sport pilots and recreational pilots.

The petitioner indicates that a grant of exemption would allow EAA to add a final piece of additional research to the baseline criteria for use of a current and valid U.S. driver's license. The petitioner states that EAA requests a grant of exemption to provide the FAA with the baseline research needed to expand into the recreational pilot arena the use of a current and valid U.S. driver's license as an acceptable FAA medical certificate. The petitioner notes that the combination of information gained from the proposed exemption, if granted, and from the proposed light-sport pilot rules should support an FAA decision to allow recreational pilots to use a current and valid U.S. driver's license instead of a medical certificate. The petitioner also notes that the FAA and general aviation organizations may use this information to establish the baseline for research.

The petitioner notes EAA's tax-exempt status and the organization's dedication to the continued growth of aviation, the preservation of aviation history, and a commitment to aviation's future. The petitioner includes specific examples of the activities EAA uses to promote the growth of aviation. The petitioner states that a grant of exemption would provide the possibility of future growth in all general aviation-related activities.

The petitioner recognizes that the FAA, EAA members, and the general public must be confident that a level of safety equivalent to that of the regulation is expected under a grant of exemption and suggests the following conditions and limitations:

1. Each individual applying to be part of this research project must—
 - a. Submit a copy of his or her pilot certificate.
 - b. Submit a copy of his or her U.S. driver's license issued by a State, the District of Columbia, Puerto Rico, a territory, a possession, or the Federal Government.
 - c. Sign and submit an EAA conditions form that will outline the terms of the exemption and indicate the individual is aware of the FAA drug and alcohol prevention programs under part 61 and 14 CFR part 91, and the recreational pilot privileges and limitations under subpart D of part 61.
2. EAA, initially upon each individual's acceptance into this research project, then annually thereafter, must submit a list of participating individuals to the FAA Flight Standards Service, the FAA Federal Air Surgeon, and the FAA Civil Aeromedical Institute.

3. EAA, upon each individual's acceptance into this research project, must provide an acceptance letter and a copy of this exemption to each participant. To act as PIC, the individual must carry the acceptance letter and a copy of this exemption at all times while flying. The acceptance letter will act as authority for each participant to take the flight training required under §§ 61.56 and 61.57.
4. A recreational pilot operating under the terms of this exemption is authorized to act as PIC within the limits of this exemption and subpart D of part 61, and he or she—
 - a. Must hold a current and valid U.S. driver's license. If the U.S. driver's license has a qualifying requirement, then that qualifying requirement apply to operating an aircraft under this exemption.
 - b. Must not act as PIC of the aircraft if he or she knows or has reason to know of any medical condition that would make him or her unable to operate the aircraft in a safe manner.
 - c. Must not act as PIC if the U.S. driver's license is revoked, rescinded, or suspended for any reason. If a doctor treating the individual recommends that the individual not drive until completion of a treatment program or if the individual's prescription has a warning label such as "do not operate machinery," "do not drive," "may cause drowsiness," or similar warning label, then the individual must consider his or her driver's license "suspended" under the terms of this exemption until such time as the treatment/prescription program ends.
 - d. Must maintain currency under §§ 61.56 and 61.57.
 - e. Must provide EAA with a semiannual report (December to May and June to November), electronic or mailed letter, indicating—
 - i. That he or she still is participating in the test program (Yes or No);
 - ii. That he or she has flown ____ hours in aircraft qualified under subpart D of part 61;
 - iii. Registration numbers (N numbers) of the aircraft flown during the reporting period;
 - iv. The date of the last § 61.56 flight review and the instructor's name/certificate number;

- v. Any/all prescribed medications taken during the reporting period; and
 - vi. Aircraft accidents/incidents, specifically—
 - a. Whether he or she was involved in an accident/incident during the reporting period (Yes or No);
 - b. The cause of the accident—medical, mechanical, weather, or other;
 - c. The N number of the aircraft involved in the accident/incident;
 - d. Any medications taken during the accident/incident; and
 - e. The name of the investigating flight standards district office.
5. EAA and the FAA reserve the right to terminate any participant who fails to comply with the terms of this exemption. Failure to submit semiannual reports to EAA is cause for termination from the program. Upon termination, the individual would be required to comply with the FAA pilot medical requirements of § 61.23 before further flight.
 6. Upon termination of this exemption all participating pilots would be required to comply with the FAA pilot medical requirements of § 61.23 before further flight.

The petitioner states that EAA's request for an exemption is to seek, through research, a reduction of the burden on citizens, a reduction in Government involvement and expenditures, as well as assurance of public safety. The petitioner further states that the proposed exemption would meet these goals by encouraging flight proficiency and safety while promoting additional flight activity that will result in a positive economic impact on all segments of sport and general aviation, including aircraft and parts manufacturers and service providers.

The petitioner includes the results of EAA's accident data review and concludes that operations under a grant of exemption could be conducted in a safe manner, without creating undue risk to persons or property on the ground or the passengers carried in each aircraft. The petitioner proposes to restrict the users of such an exemption to those holding a recreational pilot certificate, excluding those who are student pilots training for a recreational pilot certificate.

The petitioner states that to determine whether operations under the proposed exemption could be conducted safely, EAA—

1. Determined that any recreational pilots operating under the proposed exemption would be fully aware of the FAA medical guidelines contained in chapter 8 of the Airman's Information Manual.
2. Determined that all pilots, no matter what level of pilot certificate each holds, are aware of the requirements of §§ 61.14, 61.15, 61.16, 61.53, 61.56, 61.57, 61.59, 91.7, 91.17, and 91.19.
3. Determined that all pilots, no matter what level of pilot certificate they hold, are aware of the requirements of subpart B of part 61, including—
 - a. § 61.101(a)(1) – Carry no more than one passenger;
 - b. § 61.101(b) – Flight is restricted to 50 nautical miles from the departure airport, unless training and a logbook endorsement has been received per § 61.101(c);
 - c. § 61.101(d)(1) – Flight is restricted to aircraft with four or fewer seats, that is not a multiengine aircraft, has a powerplant of 180 hp or less, and does not have retractable landing gear;
 - d. § 61.101(d)(4) – Flight for compensation or hire is not authorized;
 - e. § 61.101(d)(6) – Flight is restricted to daylight hours defined as between sunrise and sunset; and
 - f. § 61.101(d)(8), (9), and (10) – Flight is restricted to an altitude of 10,000 feet mean sea level or 2,000 feet above ground level (whichever is higher), flight or ground visibility must be 3 statute miles or greater, and the pilot must maintain visual reference with the surface.
4. Determined that all pilots operating under the proposed exemption would hold a minimum of a recreational pilot certificate. The petitioner adds that database information concerning student pilots training for recreational pilot certificates using a U.S. driver's license will not be part of this study because EAA believes enough information in this area can be obtained through the proposed light-sport pilot student pilot training programs and current ultralight pilot training programs.
5. Revisited the accident safety chart for the period January 1, 1993, to December 31, 2000. In addition, the petitioner states that EAA could not find any record of any ultralight vehicle accident related to a medical condition.

The FAA's analysis/summary is as follows:

The FAA has considered fully the petitioner's supporting information and finds that a grant of exemption would not be in the public interest. As the petitioner is aware, the FAA is currently working on a related rulemaking action for light-sport pilots that will address issues similar to those raised in this petition for exemption.

The FAA notes that the comment period the light-sport pilot NPRM closed on May 6, 2002. The FAA received more than 2,400 comments for consideration. The rulemaking team is in the process of reviewing the comments and drafting the final rule. Therefore, the FAA finds that it would be premature to actively consider a petition for exemption for recreational pilots while the issue is still under consideration for application to sport pilots. Furthermore, the FAA is not seeking to obtain information, data, or experience beyond what we will get from operations under the sport pilot rule (if it goes out in final form authorizing the use of a driver's license in lieu of a medical certificate).

In consideration of the foregoing, I find that a grant of exemption would not be in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701 delegated to me by the Administrator, the petition of Experimental Aircraft Association, Inc., for an exemption from 14 CFR § 61.23(a)(3)(ii) is hereby denied.

Please note that in an effort to allow the public to participate in tracking the FAA's rulemaking activities, we have transitioned to the Department of Transportation's online Docket Management System (DMS) at <http://dms.dot.gov>. This new docket system enables interested persons to submit requests to, view requests on, and download requests from the DMS to comply with 14 CFR § 11.63. Please submit future requests through the DMS.

Issued in Washington, DC, on March 3, 2003.

/s/

Louis C. Cusimano
Acting Director, Flight Standards Service